

CHAPTER II

ORGANIZATION OF OFFICE

OFFICE CREATED

The office of treasurer is a constitutional office. The Constitution of Indiana and Indiana statutory law provide for the election of a treasurer in each county of the state at the time of holding general elections. (Article 6, Section 2, Indiana Constitution)

TERM OF OFFICE

The term of office is fixed at four years and no person is eligible to the office of treasurer more than eight years in any period in twelve years. (Article 6, Section 2, Indiana Constitution)

QUALIFICATIONS

No person shall be elected or appointed as a treasurer who is not an elector of the county, nor who has not been an inhabitant thereof, during one year next preceding appointment. (Article 6, Section 4, Indiana Constitution)

Each treasurer must reside within his/her respective county and shall keep his/her respective office at such place therein, and perform such duties, as directed by law. (Article 6, Section 6, Indiana Constitution)

OATH OF OFFICE

Except as provided in IC 5-4-1-1(c), every treasurer and deputy treasurer before entering upon the official duties, shall take an oath to support the Constitution of the United States, and of this state, and faithfully discharge the duties of such office. [IC 5-4-1-1]

This subsection applies to a deputy of a political subdivision. An individual appointed as a deputy is considered an employee of the political subdivision performing ministerial functions on behalf of an officer and is not required to take the oath. However, if a chief deputy assumes the duty of the office during a vacancy under IC 3-13-11-12, the chief deputy must take the oath before entering on the official duties of the office. [IC 5-4-1-1(c)]

Such oath shall be endorsed on the commission or certificate, and signed, and certified to by the officer before whom the same was taken, who shall also deliver to such person a certified copy of the same. [IC 5-4-1-2]

The certified copy of such oath shall be deposited by such person in the office of the clerk of the circuit court. [IC 5-4-1-4]

No person who may hereafter be a collector or holder of public moneys, shall be eligible to any office of trust or profit, until he/she shall have accounted for, and paid over, according to law, all sums for which he/she may be liable. (Article 2, Section 10, Indiana Constitution)

Such officer shall never have evaded, or have been convicted of evading the Selective Service Act of the United States, or have been convicted of any conspiracy or attempt to defraud the government of the United States, or of any seditious utterances in violation of any laws of the United States, or any other crime against the laws of the United States where sentence imposed therefor exceeded six months. [IC 5-8-3-1]

OFFICIAL BOND

The treasurer may be required to give a bond conditioned for the faithful discharge and performance of duty. The bond must be given before the commencement of the term of office and receipt of his/her commission. All official bonds shall be payable to the State of Indiana and shall be obligatory to such state, upon the principal and sureties, for the faithful discharge of all duties required of such officer by any law, then or subsequently in force, for the use of any person injured by any breach of the condition thereof. [IC 5-4-1-9; 5-4-1-10]

The bond shall be executed by the principal and one or more freehold sureties. [IC 5-4-1-13] In the event a corporate surety bond is furnished, a freehold surety, or sureties, is not required.

Per IC 5-4-1-18, the following county or township officers and employees shall file an individual surety bond:

1. Auditors, treasurers, recorders, surveyors, sheriffs, coroners, assessors, and clerks.
2. Township trustees and assessors.
3. Those employees directed to file an individual bond by the fiscal body of the county.

The fiscal body of a county or township may, by ordinance, authorize a blanket bond or a crime insurance policy endorsed to include faithful performance to cover the faithful performance of all employees, commission members, and persons acting on behalf of the local governmental unit including those officers described in (1), (2), and (3) above.

The fiscal body of the respective units shall fix the amount of the bond of county treasurers, county sheriffs, circuit court clerks, township trustees, and conservancy district financial clerks as follows:

1. The amount should equal fifteen thousand dollars (\$15,000.00) for each one million dollars (\$1,000,000.00) of receipts of the officer's office during the last complete fiscal year before the purchase of the bond, subject to subdivision (2).
2. The amount may not be less than fifteen thousand dollars (\$15,000.00) nor more than three hundred thousand dollars (\$300,000.00)

County auditors shall file bonds in amounts of not less than fifteen thousand dollars (\$15,000.00), as fixed by the fiscal body of the county. The amount of the bond of any other person required to file an individual bond shall be fixed by the fiscal body of the unit at not less than eight thousand five hundred dollars (\$8,500.00).

In 1982 and every four (4) years after that, the state examiner shall review the bond amounts fixed under this section and report to the general assembly whether he considers any changes necessary to insure adequate, economical coverage.

The commissioner of insurance shall prescribe the form of the bonds or crime policies required by this section, in consultation with the commission on public records under IC 5-15-5.1-6.

The county recorder shall procure, at the expense of the county, a book to be known as Official Bond Register wherein he shall record all bonds required by this section, which shall be indexed alphabetically in the name of the principal, reference being made to the title and office and page number where recorded. The bond shall be filed in a safe and convenient place, reference being made thereon to the date filed and record

and page where recorded, and shall remain in the office of the county recorder. Every county officer who is required to give bond shall have a copy of the oath of office recorded with the bond. This filing shall be within ten (10) days of issuance or if required, of approval. [IC 5-4-1-5.1]

NOTE: IC 36-2-7-10 provides that no charge shall be made for filing and recording an official bond.

DEFECTIVE BONDS VALID

No official bond shall be void because of defects in form or substance or in its approval and filing thereof but, upon the suggestion of such defects, such bond shall be obligatory as if properly executed, filed and approved. [IC 5-4-1-12]

BOND PREMIUM PAYABLE BY COUNTY

The bond premium for any officer or deputy is payable by the county. [IC 5-4-5-2]

The matter of payment of premium on bonds of deputy treasurers is discussed in the case of Board of Commissioners of Shelby County v. Hack (Ind. App. 109, p. 106) where it was held that:

"If bonds of deputy county treasurers, as required by the county treasurer, were presented to the board of county commissioners, it was the duty of the board to approve or disapprove them.

"The fact that the bond of the county treasurer and his deputies' bonds all carried the same surety does not destroy the official character of the bonds furnished by the deputies, and if the security is sufficient, the county is chargeable with the premiums thereon."

Attorney General Opinion dated March 25, 1925 -- "Once an official bond is approved it remains in force according to its tenor, and there cannot be a substitution of bonds except by first procuring a release of the bond approved on petition of the sureties, as provided by section 9128 to 9133 Burns R.S. 1914." [IC 5-4-4-8 to 5-4-4-13]

Attorney General Opinion dated April 8, 1937 -- This opinion cites a decision as announced in the case of Southern Surety Company v. Kenney, 74 Ind. App. 205 that: "Every bond demanded of and given by a deputy for the faithful discharge of his duties . . . is an official bond." and "It would be immaterial whether such bond is in terms payable to the State: The law makes it so payable."

DUTIES

The treasurer is the custodian of all money belonging to the county.

The treasurer shall receive all money coming to the county, and disburse the same on the proper orders issued and attested by the county auditor. [IC 36-2-10-9]

The treasurer shall give to any person paying money to him/her as treasurer a receipt therefor, which receipt, except for taxes (or special collections), shall be deposited by such person with the county auditor, who shall give such person a quietus for the same. [IC 36-2-9-12 and 36-2-10-10]

OFFICE HOURS

The treasurer shall keep the office open at the county seat, in a building provided by the board of county commissioners, every day of the year except on Sundays and legal holidays. Provided, however, the office may be closed on such days as the board of county commissioners may order in accordance with the custom and practice of the county. Any legal action required to be taken in such office during the time the office is closed, pursuant to this act, can be taken on the next following day said office is open, to the same effect as if this act had not become law. [IC 36-2-10-4 and 36-2-10-5]

In Official Opinion No. 37-1955 the Attorney General held that the board of county commissioners would have the authority to designate the opening and closing hours of all offices within the court house, subject, however, to the approval of the elected official upon whom the responsibility rests for fulfilling the statutory duties and, of course, when not in conflict with an existing statute designating specific hours during which the office must remain open.

LEGAL HOLIDAYS DEFINED

The following are legal holidays within the State of Indiana for all purposes: New Year's Day, January 1; Martin Luther King, Jr.'s Birthday, the third Monday in January; the twelfth day of February, commonly called Lincoln's Birthday; Washington's Birthday, the third Monday in February; the movable feast day of Good Friday; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Columbus Day, the second Monday in October; Veterans' Day, November 11; Thanksgiving Day, the fourth Thursday in November; Christmas Day, December 25; the day of any general, national, state or city election or primary; and the first day of the week, commonly called Sunday.

When any of these holidays, other than Sunday, comes on Sunday, the Monday next succeeding shall be the legal holiday. When any of these holidays comes on Saturday, the preceding Friday shall be the legal holiday. [IC 1-1-9-1]

APPOINTMENT OF DEPUTIES

The treasurer is authorized by statute to appoint such deputies and assistants as may be necessary for the proper discharge of the duties imposed by statute upon the treasurer. The number of deputies and assistants, both full-time and part time, shall be subject to approval of the county council. The treasurer is entitled to appoint one (1) first or chief deputy. [IC 36-2-16-4]

OATH OF DEPUTIES

This applies to a deputy of a political subdivision. An individual appointed as a deputy is considered an employee of the political subdivision performing ministerial functions on behalf of an officer and is not required to take the oath. However, if a chief deputy assumes the duty of the office during a vacancy under IC 3-13-11-12, the chief deputy must take the oath before entering on the official duties of the office. [IC 5-4-1-1(c)]

The treasurer shall be responsible for all the official acts of deputies. [IC 36-2-16-3]

REMOVAL FROM OFFICE

All county officers may be impeached, or removed from office, in such manner as may be prescribed by law. (Article 6, Section 8, Indiana Constitution)

Indiana statutes provide that the treasurer can be impeached for malfeasance in office. [IC 5-8-1-35] The statutes further provide that a person holding an office under the Constitution or laws of the state may be deprived of the office for being intoxicated during the business hours of the office. Procedures for removal from office are provided by said statute. [IC 5-8-2-1]

Whenever suit shall have been commenced on the official bond of any delinquent treasurer, he/she may be removed from office by the board of county commissioners of that county. [IC 36-2-10-3]

VACANCY

A vacancy in the office of the treasurer shall be filled in an election held by a caucus of the precinct committeemen of the same party as the person who vacated the office. [IC 3-13-7-1]

The person elected shall serve the balance of the unexpired term. [IC 3-13-7-6]

The chairman of the caucus shall certify the election results to the clerk of the circuit court who shall forward a copy of the certificate to the election division. [IC 3-13-11-11]

A vacancy occurring pending a contested election must be filled as other vacancies until such contest is decided or the office otherwise filled. [IC 3-13-7-4]

Appointments made under IC 3-13-7-2 are considered appointments pro tempore for the purposes of Article 2, Section 11, of the Constitution of the State of Indiana.

OATH OF APPOINTEE, RIGHTS AND DUTIES

A person temporarily filling a vacancy must give the bond, take the oath, and have the rights and duties of the officer whose place he/she fills. [IC 3-13-7-5]

ACCOUNTING TO SUCCESSOR

A public servant who knowingly or intentionally fails to deliver public records and property in his custody to his successor in office commits official misconduct, a Class A misdemeanor. [IC 35-44-1-2]

TEMPORARY TAX COLLECTION OFFICES

The treasurer, when authorized by the board of county commissioners, may open temporary offices for the collection of taxes in cities and towns in the county, other than the county seat. [IC 6-1.1-22-8]

SIGNATURE ON DOCUMENTS

The following documents must be signed by the county treasurer or a designee of the county treasurer:

1. A notice of demand issued under IC 6-1.1-23;
2. Any other document issued under IC 6-1.1-23 that requires an authorizing signature.

Any document signed under IC 6-1.1-23 is an official document of the county treasurer. [IC 6-1.1-23-1.2]